IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29-10-2013

CORAM

THE HON'BLE MR.JUSTICE T. MATHIVANAN

CIVIL REVISION PETITION No.709 of 2007

Kandasamy,
S/ o.Chellappa Gounder,
Parataiyagoundanpudur
Akkiyampatti Village,
Namakkal Taluk.

.. Petitioner/Plaintiff/Petitioner

vs

Palaniyandi,
S/o.Marappa Gounder,
Kongalathur,
Lathuvadi Village,
Namakkal Taluk.

.. Respondent/Defendant/Respondent

Civil revision petition filed under Section 115 of the Code of Civil Procedure against the order of the Additional District Munsif , Namakkal, dated 11.12.2018 and made in R.E.A..No.20 of 2008 in R.E.P.No.133 of 2007 in O.S.No.208 of 2004.

For Petitioner : Mr.T.Dhanyakumar
For Respondent : M.R.Subramanian

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ORDER

Challenging the decreetal order, dated 11.12.2008 and made in the Execution Application in E.A.No.20 of 2008 in E.P.No.133 of 2007 in O.S.No.208 of 2004, on the file of the Additional District Munsif, Namakkal, this memorandum of Civil Revision Petition has been filed, after invoking the provisions of Section 115 of the Code of Civil Procedure.

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2. The revision petitioner is the plaintiff in the suit in O.S.No.208 of 2004, whereas the respondent is the defendant.

3. Heard Mr. T.Dhanyakumar, learned counsel appearing for the petitioner and Mr. R.Subramanian, learned counsel appearing for the respondent.

4. It is manifested from the records that the revision petitioner had filed a suit, in O.S.No.208 of 2004, on the file of the learned Additional District Munsif, Namakkal as against the respondent claiming a sum of Rs.60,300/- together with subsequent interest on the principal sum of Rs.60,000/. The suit was decreed, as prayed for on 15.11.2005.

5. Claiming a total sum of Rs.1,21,146.50 p the revision petitioner had filed an Execution Petition in E.P.No.133 of 2007, on the file of the Additional District Munsif, Namakkal.

6. The said Execution Petition was contested by the respondent/judgment debtor. It appears from the records that the above said execution proceedings was taken out under Order 21 Rule 46A of the Code of Civil Procedure. During the pendency of the Execution Proceedings, the revision petitioner being the decree holder had initiated steps to attach a sum of 33,500/- along with interest which was found lying on the deposit of the garnishee. This amount with interest was virtually belonged to the judgment debtor. It is also seen that a notice was ordered to be served on the respondent/judgment debtor as well as

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on the garnishee returnable by 25.06.2004. When the matter stood posted for hearing on 18.7.2007, the respondent/judgment debtor had not turned up to file his counter statement. Since there was no representation on his behalf, he was called absent and was set exparte. Therefore, the amount of Rs.33,500/- with interest accrued thereon was ordered to be attached. Batta was also directed to be paid within three days.

7. From the records, this Court is able to understand that in pursuant to the notice sent to the garnishee, they had deposited a sum of Rs.1,19,575/- in BR No.180/2007 before the Executing Court. This fact was brought to the notice of the Court of first instance. On taking notice of this fact, the Court of first instance had closed the execution proceedings, as there was no necessity to proceed further with the Execution Petition.

8. Thereafter, the decree holder had taken out an Application under Rules 163 and 165 of the Civil Rules of Practice to issue a cheque in the name of his Lawyer in respect of the amount viz., Rs.1,19,575/-.

9. It is pertinent to note that the claim amount is Rs.1,22,320/-, but the garnishee had deposited only a sum of Rs.1,19,575/-. Therefore, for the available amount, the decree holder had filed the said Petition to issue a cheque in the name of his Lawyer. That Petition was also contested by the judgment debtor.

10. While allowing the said Petition, the learned Additional District Munsif, Namakkal had found that there was no dispute with regard to the sum of Rs.1,22,320/-, which was due to be paid to the decree holder by

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the judgment debtor. Excepting the contention that the amount deposited by the garnishee i.e Rs. 1,19,575/- was not attached, no other reason was assigned as to why the decree holder could not be allowed to receive the above said amount. The learned Additional District Munsif, Namakkal had also found that since there was no effective denial on the part of the judgment debtor with regard to the decree amount passed in the suit in O.S.No.208 of 2004,the judgment debtor was not entitled to take the plea that the deposited sum of Rs.1,19,575/- could not be given to the decree holder. Ultimately, the petition was allowed.

11. It is significant to note here that the decree was not drawn in consonance with the fair order passed by the learned Additional District Munsif, Namakkal in the Execution Application in E.A.No.20 of 2008.

12. It is obvious to note here that the decree holder had claimed in E.A.No.20 of 2008 that a cheque in respect of Rs.1,19,575/- might to be issued in the name of his lawyer, as contemplated under Rules 163 and 165 of the Civil Rules of Practice. The said claim was allowed by the Executing Court. But the Office of the Registry of the learned Additional District Munsif, Namakkal had not drawn the decree inconsonance with the order, dated 11.12.2008, instead the decree seems to have been drawn in the following manner:

(i) "Out of the sum of Rs.1,19,575/- which was lying to the credit of the Suit, in O.S.No.208 of 2004, excepting the attached amount of Rs.98,932/-, a cheque in respect of the remaining balance of Rs.20,643/- shall be issued" and

(ii) The Petitioner/decree holder shall take steps to realise the remaining balance."

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13. Having been aggrieved by this conflicted decree, the decree

holder stands before this Court with the present civil revision petition.

14. When the revision petition came up for hearing before this Court on 11.4.2011, it was pointed out by learned counsel for the revision petitioner/decree holder that the Court below had allowed the petition in E.A.No.20 of 2008 as prayed for, but in the decreetal order it is stated that a cheque shall be issued for Rs.20,648/- only and directed to retain of Rs.98,932/- on the ground that it has been attached. The learned counsel for the revision petitioner had also submitted that the decreetal order should be in conformity with the fair order. He has further submitted that there was absolutely no reference or mention about the alleged attachment of Rs.98,932/- in R.E.P.No.133 of 2007 in O.S.No.208 of 2004 and therefore he has requested this Court to set aside the decreetal order, as it was not drawn in consonance with the Order.

15. In view of the submissions made by learned counsel appearing for the revision petitioner, this Court had directed the Registry of this Court to call for an explanation from the learned Additional District Munsif, Namakkal.

16. Pursuant to the direction of this Court, one K.Babu, Judicial Officer/Chairman Taxation Appeals Tribunal, Erode Municipal Corporation, Erode, who was functioning as the Additional District Munsif, Erode at the time of passing of the impugned order had submitted his explanation, dated 30.5.2011 to this Court. In his explanation he has justified his order. However, in his explanation he has proceeded to submit that after passing the order on 11.12.2008 in R.E.A.No.20 of 2008 in R.E.P.No.133 of 2007, the matter was posted for further hearing on 22.12.2008 for

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verification as to whether any stay order was pending or whether any attachment order was pending as on 22.12.2008. He has also stated that the Head Ministerial Officer (Head Clerk) after verifying the records had found that an order of attachment in respect of the amount of Rs.98,932/- from the amount of Rs.1,19,575/-, deposited to the credit of R.E.P.No.133 of 2007 in O.S.No.208 of 2004 was made on 30.7.2007 in I.A.No.190 of 2008 in O.S.No.114 of 2008. As such the Head Ministerial Officer had made an endorsement in the R.E.A.No.20 of 2008 stating that 'on verification, a sum of Rs.98,932/- has been attached in I.A.No.190 of 2008 in O.S.No.114 of 2008. He has therefore directed the issuance of a cheque for Rs.20,643/- in favour of the counsel for the petitioner.'

17. The explanation given by the learned Additional District Munsif, Namakkal is not able to be countenanced and it clearly discloses his ignorance in respect of court proceedings. It is also necessitated to infer that the learned Additional District Munsif, Namakkal is totally unfit to be a Judicial Officer to handle and decide cases of civil nature.

18. On perusal of the records, this Court finds that on 18.7.2007, the judgment debtor had not made his appearance before the Executing Court and therefore, he was called absent and set exparte. Hence, the amount of Rs.33,500/- with interest accrued thereon, which was available at the hands of the garnishee was directed to be attached. Batta was also directed to be paid within three days. When the garnishee happened to receive the notice, he had deposited the amount of Rs.33,500/- with interest accrued thereon totaling R.1,19,575/- on 30.7.2007 itself in B.R.No.180 of 2007. Therefore, it is explicit that the entire amount of

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Rs.1,19,575/- was already attached by the Executing Court and as on 5.12.2007, the said amount was lying in Court deposit to the credit of E.P.No.133 of 2007 in O.S.No.208 of 2004. With respect to this amount, the decree holder had also filed an Application in E.A.No.20 of 2008 under Rules 163 and 165 of Civil Rules of Practice. This petition was allowed by the Court below permitting the petitioner/decree holder to receive the amount. But the decree was not drawn in accordance with the order passed in E.A.No.20 of 2008. The impugned order seems to have been passed on 11.12.2008. The then Additional District Munsif, Namakkal in his explanation has also admitted that the amount of Rs.1,19,575/- was deposited to the credit of E.P.No.133 of 2007 in O.S.No.208 of 2008 as early as on 30.07.2007.

19. After disposal of the petition on 11.12.2008 what was the necessity for the Additional District Munsif, Namakkal to post the petition for further hearing on 22.11.2008? It is to be seen that the amount of Rs.1,19,575/- was ordered to be attached on 18.7.2007 and that was why the garnishee on receipt of the notice had deposited the amount on 30.7.2007 itself. The Ministerial head of the Office had agreed that the then Additional District Munsif, Namakkal had verified and found that there was an order of attachment in respect of Rs.98,932/- from and out of the sum of Rs.1,19,575/- in an Interlocutory Application in I.A.No.190 of 2008 in O.S.No.114 of 2008, but his explanation does not have any reference to show on what date the order of attachment in respect of Rs.98,932/- was passed. Consequently when the entire amount of Rs.1,19,975/- was attached and deposited to the credit of E.P.No.133 of

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2007 in O.S.No.208 of 2004 on 30.7.2007, the order of attachment could not have been made in an Interlocutory Application in I.A.No.190 of 2008 in O.S.No.114 of 2008 which is totally irrelevant and unconnected with E.P.No.133 of 2007 in O.S.No.208 of 2004. Therefore, the alleged order of attachment in respect of the sum of Rs.98,932/ which was made in an unconnected Interlocutory Application in I.A.No.190 of 2008 in O.S.No.114 of 2008 is against the procedure known to the Code of Civil Procedure as well as to the Civil Rules of Practice. Hence, the impugned decreetal order, dated 11.12.2008 deserves to be set aside and the alleged attachment said to have been made in I.A.No.190 of 2008 in O.S.No.114 of 2008, which is totally irrelevant and alien to the E.P.No.133 of 2007 in O.S.No.208 of 2004 is also liable to be set aside.

20. In view of the above, this Civil Revision Petition is allowed and the decreetal order, dated 11.12.2008 made in Execution Application in E.A.No.20 of 2008 in E.P.No.133 of 2007 in O.S.No.208 of 2004 is set aside and the Court below ,viz., Additional District Munsif, Namakkal is directed to draw the decree forthwith strictly in accordance with the fair order dated 11.12.2008 and issue the cheque in the name of the counsel for the revision petitioner, who was appearing before the Court below together with interest accrued thereon. However, there will be no order as to costs.

29.10.2013

T.MATHIVANAN,J

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